IN THE

Supreme Court of the United States

October Term, 1971

Supreme Court, U. S.
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No. 71-1401

In the Matter of The New York, New Haven and Hartford Railroad Company, Debtor

Richard Joyce Smith, Trustee of the Property of The New York, New Haven and Hartford Railroad Company, Debtor,
Petitioner,

v.

George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz, Trustees of the Property of Penn Central Transportation Company, Debtor; Manufacturers Hanover Trust Company, as Mortgage Trustee; and Penn Central Transportation Company,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF RESPONDENT MANUFACTURERS HANOVER TRUST COMPANY, AS MORTGAGE TRUSTEE

EDWARD ROBERTS, III,
Attorney for Respondent Manufacturers Hanover Trust Company, as Mortgage Trustee
350 Park Avenue
New York, New York 10022

Of Counsel:
FRANK H. HEISS
ROBERT L. CRAWFORD
KELLEY DRYE WARREN CLARK
CARR & ELLIS

Dated: May 26, 1972

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BRIEF OF RESPONDENT MANUFACTURERS HANOVER TRUST COMPANY, AS MORTGAGE TRUSTEE

Preliminary Statement

Respondent Manufacturers Hanover Trust Company ("Manufacturers Hanover"), as Trustee under The New

York Central and Hudson River Railroad Company (the "Central") Three and One-Half Percent Gold Bond Mortgage, dated June 1, 1897 (the "1897 Mortgage"), by its attorneys, respectfully submits this brief in response both to the above-captioned Petition and to No. 71-1451, the similar Petition, dated May 6, 1972, of Lawrence W. Iannotti, Successor Trustee under the First and Refunding 4% Mortgage Bonds, dated as of July 1, 1947, of The New York, New Haven and Hartford Railroad Company, Debtor.[1]

Questions Presented

The principal question raised by these petitions is whether the Court of Appeals correctly held that the New Haven Reorganization Court had no jurisdiction to declare an equitable lien on, and a constructive trust on the income from, various former properties of the New Haven because those properties, which the Penn Central Trustees had legal title to and actual possession of, were under the exclusive jurisdiction of the Penn Central Reorganization Court under Section 77(a) of the Bankruptcy Act, 11 U.S.C.

1. For convenience we have used the same shortened reference forms as those used in the New Haven Trustee's Petition:

"New Haven"—The New York, New Haven and Hartford Railroad Company, Debtor.

"Penn Central"—Penn Central Transportation Company, Debtor.

"New Haven Reorganization Court"—the United States District Court for the District of Connecticut.

"Penn Central Reorganization Court"—the United States District Court for the Eastern District of Pennsylvania.

"Court of Appeals"—the United States Court of Appeals for the Second Circuit.

"Commission"—the Interstate Commerce Commission.

§205(a)? A secondary question raised by the petitions is whether the admittedly important federal question of Section 77(a) jurisdiction has not already been settled by previous decisions of this Court, which were correctly applied by the Court of Appeals in the decision, review of which the New Haven Trustee and Mr. Iannotti now seek?

Statement of Facts

This Court last considered the problems arising out of the various proceedings involving the reorganization of the New Haven, the merger of the Pennsylvania Railroad Company and the Central, and the sale of the New Haven's properties to the newly formed Penn Central in the *New Haven Inclusion Cases*, 399 U.S. 392 (1970). Briefly what had transpired prior to that decision was the following:

July 7, 1961—New Haven enters reorganization under Section 77.

April 6, 1966—Commission approves Penn Central merger subject to the inclusion of the New Haven.

November 19, 1967—Commission prescribes terms for the New Haven's inclusion setting the consideration to be paid by Penn Central at $125 million.

February 1, 1968—Penn Central merger effected.

November 25, 1968—Commission revises the terms for the New Haven's inclusion it prescribed November 19, 1967, increasing the consideration to be paid by Penn Central to $145.6 million.

December 24, 1968—New Haven Reorganization Court orders the transfer of the New Haven's assets to Penn Central by January 1, 1969.

May 28, 1969—New Haven Reorganization Court increases the consideration to be paid by Penn Central to $174.6 million.

June 21, 1970—Penn Central enters reorganization under Section 77.

June 29, 1970—*New Haven Inclusion Cases, supra,* decided.

In the *New Haven Inclusion Cases, supra,* this Court affirmed the decision of the New Haven Reorganization Court setting the consideration to be paid by Penn Central for the New Haven assets at $174.6 million. But, because the major part of that consideration was to be paid in Penn Central stock which in the spring of 1970 was not selling at the $87.50 intrinsic value set by the New Haven Reorganization Court, this Court remanded the case for

> "further proceedings before the Commission and the appropriate federal courts * * * to determine the form that Penn Central's consideration to New Haven should properly take * * *." *New Haven Inclusion Cases, supra* at 489.

Instead of simply remanding the proceedings to the Commission in accordance with this Court's direction, the New Haven Reorganization Court, on August 10, 1970, ordered that the Trustee of the New Haven and all other interested parties file "statements of position" on certain specified issues, as to which, the Court indicated, it might give directions to the Commission in its remand order. Two of the issues listed in the New Haven Reorganization Court's August 10, 1970 Order—whether it could and should declare an equitable lien on the New Haven assets transferred to Penn Central on December 31, 1968 and

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whether it could and should order the Penn Central Trustees to pay the New Haven Trustee half the excess income from the so-called Grand Central Terminal properties[2]—vitally affected the rights of Manufacturers Hanover, as Trustee of the 1897 Mortgage.

The Rights of Manufacturers Hanover, as Trustee of the 1897 Mortgage

In its Statement of Position, filed in response to the New Haven Reorganization Court's August 10, 1970 Order, Manufacturers Hanover, in addition to challenging the Court's power to declare equitable liens on or otherwise affect the property of Penn Central within the exclusive jurisdiction of the Penn Central Reorganization Court, advised the New Haven Reorganization Court of the following.

On June 1, 1897, the Central had mortgaged all its properties to a predecessor of Manufacturers Hanover, as Trustee, to secure an issue of bonds. Included in the trust estate mortgaged by the Central were the Grand Central Terminal properties. There were presently outstanding under the 1897 Mortgage approximately $80,000,000 in bonds, all in default as a result of the Penn Central bankruptcy. Any rights the New Haven had had in the Grand Central Terminal properties arose from a 1907 agreement between the Central and the New Haven for the develop-

2. (A. 26-27). References preceded by the letter "A" are to the pages of the Appendix annexed to the New Haven Trustee's Petition and NOT the Appendix to this brief.

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ment of the Grand Central Terminal area.[3] Regardless of what rights, if any, the New Haven retained in the Grand Central Terminal properties following the transfer of those properties to Penn Central on December 31, 1968, those rights were clearly subordinate to the recorded lien of Manufacturers Hanover, as Trustee of the 1897 Mortgage. Consequently, even if the New Haven Reorganization Court were to conclude that it did have subject matter jurisdiction to declare an equitable lien and to order the Penn Central Trustees to pay half of the excess income from the Grand Central Terminal properties to the New Haven, it could not do so without totally abrogating the rights held by Manufacturers Hanover as Trustee for the holders of the bonds issued under the 1897 Mortgage.

The New Haven Reorganization Court's Order on Remand

On June 22, 1971, nearly a year after this Court had remanded the *New Haven Inclusion Cases, supra,* "for further proceedings before the Commission," the New Haven Reorganization Court in its Order of Remand[4] declared an equitable lien encumbering virtually all the assets which the New Haven had conveyed to Penn Central on December

3. This was the conclusion of the Special Master appointed by the New Haven Reorganization Court to make a legal appraisal of the interests and rights of the New Haven in the Grand Central Terminal properties. The Special Master's report was adopted by the New Haven Reorganization Court and that portion of its decision affirmed by this Court. *In re New York, New Haven and Hartford Railroad Co.*, 289 F. Supp. 451, 463 (1968), *aff'd in part sub nom., New Haven Inclusion Cases, supra* at 438-451.

4. *In the Matter of The New York, New Haven and Hartford Railroad Co., Debtor*, 331 F. Supp. 212 (D. Conn. 1971) (A. 61 *et seq.*).

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1, 1968.[5] In addition, the Order of Remand directed the Penn Central Trustees (i) to hold in trust for the benefit of the New Haven all the right, title and interest in the Grand Central Terminal properties which the New Haven had transferred to Penn Central on December 31, 1968 and (ii) commencing on July 1, 1971, to accrue to the account of the New Haven one-half the excess income from the Grand Central Terminal properties.[6]

The New Haven Reorganization Court's Order of Remand completely ignored the rights in the Grand Central Terminal properties held by Manufacturers Hanover, as Trustee of the 1897 Mortgage, although curiously enough the Court in its accompanying Memorandum of Decision[7] commented on those rights: "* * * Manufacturers Hanover Trust Co., Indenture Trustee under N.Y. Central & Hudson R.R.Co. Gold Bond Mortgage of 1897, claims that the New Haven property comes within the provisions of its mortgage. The Penn Central Trustees do not contradict this."[8]

The New Haven Reorganization Court's Order of Remand was appealed to, and reversed by, the Court of Appeals on March 17, 1972 on the ground that "the district court lacked subject matter jurisdiction under §77(a) of the Bankruptcy Act, 11 U.S.C. §205(a) (1970), to issue the order, since the property affected is within the exclusive jurisdiction of another district court."[9]

5. 331 F. Supp. at 215 (A. 64).

6. 331 F. Supp. at 215-216 (A. 64-65).

7. *In the Matter of The New York, New Haven and Hartford Railroad Co., Debtor,* 330 F. Supp. 131 (D. Conn. 1971) (A. 25 *et seq.*).

8. 330 F. Supp. at 144 (A. 44).

9. *In the Matter of The New York, New Haven and Hartford Railroad Co., Debtor,* —— F. 2d —— (2d Cir. March 17, 1972) (A. 5 *et seq.*).

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Reasons for Denying the Writ

The Court of Appeals Correctly Applied Relevant Decisions of This Court Relating to a Reorganization Court's Exclusive Jurisdiction Under Section 77(a).

Section 77(a) of the Bankruptcy Act, 11 U.S.C. §205(a) (1970), provides in relevant part:

> "If the petition [stating that the railroad is insolvent and wishes to reorganize its capital structure] is so approved [by a judge of the district court of proper venue], the court in which the order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have *exclusive jurisdiction of the debtor and its property wherever located* * * *" (Emphasis added).

When the New Haven Reorganization Court in its Order of Remand imposed an equitable lien on the former New Haven assets conveyed to Penn Central on December 31, 1968 and ordered the Penn Central Trustees to hold Penn Central's Grand Central Terminal properties in trust for the benefit of the New Haven, it was circumventing the unambiguous language of Section 77(a) which granted the Penn Central Reorganization Court exclusive jurisdiction over the property of Penn Central.

The Court of Appeals could have simply relied on Section 77(a) when it reversed the New Haven Reorganization Court's Order of Remand. Instead, however, the Court of Appeals, in a detailed and well-reasoned opinion, reviewed each of the arguments made by the appellants and the appellees on the jurisdictional issue, cited and discussed the relevant decisions of this Court, and then con-

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cluded that under Section 77(a) and the decisions of this Court interpreting Section 77(a) "* * * only the Pennsylvania [i.e., the Penn Central] reorganization court had jurisdiction under §77(a) over the property here in question."[10]

The New Haven Trustee lists four reasons why this Court should review the Court of Appeals decision: (i) only this Court can construe its remand decision in the *New Haven Inclusion Cases, supra,* with finality; (ii) the New Haven Reorganization Court had jurisdiction to protect the constitutional rights of the New Haven creditors; (iii) the Court of Appeals misapplied *Warren* v. *Palmer;*[11] and finally (iv) an argument based on the equities. None of these reasons warrant the grant of certiorari.

1. Finality

The New Haven Trustee argues that this Court is the only Court which can construe its remand decision in the *New Haven Inclusion Cases, supra,* with finality. Clearly, that is so. It is, however, hardly a reason for this Court to issue a writ of certiorari. The relevant question here is whether the Court of Appeals correctly interpreted the *New Haven Inclusion Cases, supra.* A comparison of both opinions shows that it did.

In the *New Haven Inclusion Cases, supra,* this Court remanded the case for "[f]urther proceedings before the Commission and the appropriate federal courts * * * to

10. —— F. 2d at —— (A. 16).

11. 310 U.S. 132 (1940).

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determine the form that Penn Central's consideration to New Haven should properly take * * *."[12] The Court of Appeals decision reversing the New Haven Reorganization Court's Order of Remand provides:

> "This case must be remanded to the Commission so that a reorganization plan, fair and equitable to all parties, can be formulated. One of the main reasons for the enactment of §77 was to establish a reorganization procedure in which an expert agency would examine the technical and financial problems of the railroad and propose a reorganization plan to the reorganization court for approval. As both the Penn Central and the New Haven are in reorganization, at least nominally, before courts in different circuits, the Commission is the common denominator between those courts so far as the formulation of a single plan, or two interrelated plans, is concerned. Whatever protection the New Haven estate must receive in terms of some senior position in the Penn Central proceeding must first be proposed by the Commission in the context of a reorganization plan for the Penn Central which, it is to be hoped, will advance the public interest by successfully establishing a financially viable Penn Central. The Commission has stated that, if the proceeding is remanded to it, it will consolidate the Penn Central reorganization and New Haven inclusion proceedings so as to consider the terms of the New Haven inclusion as 'a portion of the reorganization of Penn Central * * *' This procedure is, we believe, the proper method by which the interests of all parties—the New Haven estate, Penn Central and its creditors, and the public—can best be advanced."[13]

12. 399 U.S. at 489.

13. —— F. 2d at —— (A. 18-19).

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Clearly it is the Court of Appeals decision remanding the case directly to the Commission, and not the New Haven Reorganization Court's Order of Remand, which correctly carries out the mandate in the *New Haven Inclusion Cases, supra.*

2. *The Constitutional Rights of the New Haven Creditors*

The New Haven Trustee argues that the *New Haven Inclusion Cases, supra,* held that "the New Haven creditors have suffered all the losses they were required to suffer in the public interest and that any further losses would be an unconstitutional taking of their property without just compensation * * *."[14] He also states that the equitable lien and constructive trust were appropriate security devices to prevent further losses and an unconstitutional taking.

The argument is fallacious in two respects. First, the losses referred to in the *New Haven Inclusion Cases* were losses suffered by the New Haven estate because of its unprofitable operation of the New Haven as a railroad in the public interest. That operation ceased on December 31, 1968, when the New Haven transferred its railroad to Penn Central. Thereafter it was and still is Penn Central and its creditors who are suffering the losses incurred in the operation of the former New Haven rail assets.

Secondly, the equitable lien and the constructive trust are not appropriate security devices since they violate not only Section 77(a), but also the New Haven Reorganization Court's own order of December 24, 1968 approving the

14. New Haven Trustee's Petition, p. 21.

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transfer of the New Haven assets to Penn Central. There the New Haven Reorganization Court ordered "a binding transfer" of the New Haven assets to Penn Central "free and clear of all liens, charges and encumbrances thereon."[15] The order provided that the various liens, charges and encumbrances to which the transferred assets had been subject prior to conveyance "shall attach and be recognized as continuing liens, charges and encumbrances upon the assets hereafter held by the New Haven Trustees," which included the consideration paid by Penn Central.[16]

The equitable lien and the constructive trust, interfering as they do with the assets transferred from the New Haven to Penn Central, violate the New Haven Reorganization Court's own order approving the transfer "free and clear of all liens, charges and encumbrances."

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15. Paragraphs J and K of Order No. 559, which we have printed in its entirety as an appendix to this brief, were quoted at pp. 7-8 of the New Haven Trustee's Petition. Paragraph H of Order No. 559 provides:

> "The conveyance of the Debtor's assets to Penn Central Company pursuant to the Plan shall be *a binding transfer* to Penn Central Company *free and clear of all liens, charges and encumbrances* thereon except as specified in Section 3.2 of the Purchase Agreement as modified with regard to the Harlem River Division mortgage and bonds and approved in the Plan; the liens, charges and encumbrances to which the Debtor's assets are subject prior to the conveyance of such assets shall attach and be recognized as continuing liens, charges and encumbrances upon the assets hereafter held by the New Haven Trustees, including all assets on deposit in the registry of this Court, all as provided in the Plan." (Emphasis added)

16. Paragraph L of Order No. 559 set forth in the Appendix hereto.

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3. *Warren* v. *Palmer*

The Court of Appeals held that *Warren* v. *Palmer*, *supra*, was determinative,[17] concluding that the New Haven Reorganization Court's Order on Remand "could * * * seriously impair the formulation of a workable plan for the financial resuscitation of Penn Central by the Commission and the ability of the Pennsylvania reorganization court to administer the entire Penn Central system, of which the New Haven line is but a division * * *."[18]

The New Haven Trustee argues that there was no showing that any such impact had occurred.[19] Reference to the New Haven Reorganization Court's Order on Remand refutes this contention. The operative provisions of the Order of Remand do not merely declare the equitable lien, they also direct the Penn Central Trustees to hold the Grand Central Terminal properties in trust for the benefit of the New Haven and to accrue for the account of the New Haven one-half the excess income from those properties.

This is precisely the sort of interference with the operations of a railroad in reorganization to which *Warren* v. *Palmer* applies. The existence of the Order on Remand, we submit, constitutes impermissible encroachment on the Penn Central Reorganization Court's Section 77(a) jurisdiction.

Nor does the statement of the New Haven Reorganization Court in its Memorandum of Decision that "* * * this

17. —— F. 2d at —— (A. 13).

18. —— F. 2d at —— (A. 16).

19. New Haven Trustee's Petition, p. 26.

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court claims only the power to declare the existence of an equitable lien on the conveyed property, including a constructive trust to the extent of the capitalized value of one-half of the excess income from the Grand Central properties * * *. [T]he New Haven reorganization court does not under the present circumstances assert the power to enforce such a lien."[20] As United States courts are not normally given to knowingly making unenforceable declarations, one can question this distinction which the New Haven Reorganization Court makes between its power to declare and its power to enforce. Such questioning is not necessary however—it is the Order of Remand with its clear-cut directions to the Penn Central Trustees which restricts their management of Penn Central, and it is the Order of Remand which the Court of Appeals reversed.

4. The Equities

Throughout his Petition the New Haven Trustee has sought to create the impression that the Penn Central's other creditors are being unjustly enriched at the expense of the New Haven and that the New Haven Reorganization Court is the only tribunal which can effectively protect the New Haven's right. A return to reality seems justified.

After the December 31, 1968 transfer of the rail assets of the New Haven to Penn Central, the New Haven estate's principal assets were securities—bonds, stock and Penn Central's promise to underwrite the value of the stock—of Penn Central. As long as Penn Central remained solvent, the New Haven Trustee had the right, as a Penn Central security holder, to require Penn Central to live

20. 330 F. Supp. at 137 (A. 30).

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up to the terms of those securities. He could enforce that right in the New Haven Reorganization Court or any other court where Penn Central could be served.

On June 21, 1970, when the Penn Central entered reorganization in the Penn Central Reorganization Court, that Court and that Court alone acquired jurisdiction over the assets of Penn Central. All claims on those assets had to be made before the Penn Central Reorganization Court so that it could apportion equitably the limited assets of the Penn Central estate among the various claimants to those assets.

No greater demonstration can be made of the soundness of Section 77(a) in bestowing upon a reorganization court exclusive jurisdiction over the property of a debtor in reorganization than the example of the encroachment on the Penn Central Reorganization Court's exclusive jurisdiction by the New Haven Reorganization Court in its Order of Remand.

Notwithstanding that the New Haven Reorganization Court was sitting as a court of equity, it ignored consideration of the relative merits of the claims of all creditors of Penn Central. Instead, it considered only the merits of the unsecured claim of the New Haven Trustee which the New Haven Reorganization Court, by its Order of Remand, elevated to secured status.

It is not surprising that most creditors of Penn Central did not appear in New Haven and did not attempt to justify the merits of their claims against Penn Central before the New Haven Reorganization Court. They undoubtedly as-

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sumed that their claims would eventually be weighed by the Penn Central Reorganization Court. It is surprising that the New Haven Reorganization Court chose to ignore this vast body of claimants, many of whom may be entitled to the same solicitous consideration which the New Haven Reorganization Court reserved for the New Haven Trustee.

As Manufacturers Hanover informed the New Haven Reorganization Court in its Statement of Position, the Grand Central Terminal properties are pledged to it, as Trustee under the 1897 Mortgage. Any order of the New Haven Reorganization Court diverting the excess income of the Grand Central Terminal properties to the New Haven Trustee would violate the rights of 1897 Mortgage bondholders who are entitled to the full security of the pledge of the Grand Central Terminal properties. Whatever may have been the rights of the New Haven Trustee in the Grand Central Terminal properties vis-a-vis the rights of Penn Central as successor to the Central, those rights are clearly subordinate to the rights of Manufacturers Hanover, as Trustee of the 1897 Mortgage, to the full security of the pledge of the Grand Central Terminal properties.

There was not in the record before the New Haven Reorganization Court one shred of evidence which even suggests that the rights of the New Haven Trustee to the Grand Central Terminal properties are superior to the rights of the 1897 Mortgage Trustee. There is nothing in the record before this Court to suggest that the New Haven Reorganization Court, which has ignored the claims of Manufacturers Hanover, as Trustee for the holders of bonds secured by the 1897 Mortgage, and which has apparently been unconcerned over the plight of any other Penn Central

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creditor except the New Haven Trustee, is better equipped than the Penn Central Reorganization Court to dispense equitably the limited assets of Penn Central to those creditors entitled to them. Section 77(a), the decisions interpreting Section 77(a), and common sense all compel the conclusion that the Penn Central Reorganization Court is the only tribunal which, in the first instance, has or should have the power over the assets of Penn Central.

Conclusion

Petitioners have not shown any reasons for granting the writ; certiorari should be denied.

Respectfully submitted,

EDWARD ROBERTS, III,
Attorney for Respondent
Manufacturers Hanover Trust Company,
as Mortgage Trustee
350 Park Avenue
New York, New York 10022

Of Counsel:
FRANK H. HEISS
ROBERT L. CRAWFORD
KELLEY DRYE WARREN CLARK
CARR & ELLIS

Dated: May 26, 1972

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APPENDIX

APPENDIX

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Order No. 559

IN THE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

ORDER DIRECTING INCLUSION OF DEBTOR IN PENN CENTRAL COMPANY

The Interstate Commerce Commission (the Commission) having certified to this Court, on December 2, 1968, a Plan of Reorganization for the Debtor (the Plan), as embodied in its reports and orders of November 16, 1967 and March 1, 1968 which have been modified in accordance with its report and order of November 25, 1968, together with exhibits and a transcript of the proceedings before the Commission; this Court having, by Order of December 3, 1968, directed the filing of objections and claims for equitable treatment on or before December 16, 1968, and scheduled hearings on the Plan commencing December 20, 1968; notice of said Order of December 3, 1968 and of the hearings thereon having been duly given in accordance with said Order; all parties in interest having been given due opportunity to file their objections in writing to said Plan and their claims

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for equitable treatment; the Court having, at the hearing on December 20, 1968, limited said hearing to the issue of the inclusion of the Debtor's railroad operations in Penn Central Company on or before January 1, 1969 by conveyance of the Debtor's assets to Penn Central Company and payment of consideration therefor by Penn Central Company, as specified in the Plan, subject to the jurisdiction reserved in this Order; all parties in interest having been heard or given opportunity to be heard on said issue; and this Court having filed its opinion in the premises,

THE COURT FINDS AS FOLLOWS:

1. Due and lawful notice to all persons and parties has been given in strict compliance with the Order of this Court of December 3, 1968 prescribing the manner of notice.

2. Subject to the jurisdiction reserved herein, the inclusion of the Debtor's operations in Penn Central Company as of December 31, 1968 in accordance with the Plan is fair and equitable, and otherwise fully complies with the requirements of Section 77 of the Bankruptcy Act, including subsections (b) and (e) thereof.

3. The Debtor is insolvent within the meaning of Section 77(e) of the Bankruptcy Act, and the equity of the holders of the Debtor's preferred and common stock and certificates of beneficial interest has no value.

4. Inclusion of the Debtor's operations in Penn Central Company as of December 31, 1968 by conveyance of the Debtor's assets and payment of the consideration specified in the Plan, subject to the jurisdiction reserved herein, will not adversely and materially affect any class of stockholders or of creditors of the Debtor's estate, except that under Section 77(e) of the Bankruptcy Act, the interest of the United States of America is deemed to be affected.

5. The United States of America has consented to the order of the Interstate Commerce Commission insofar as it relates to the conveyance of the Debtor's assets to Penn Central Company,

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New Haven Trustees, and the New Haven Trustees are authorized to receive, on the closing date provided in the Plan, to wit, December 31, 1968, the following consideration:

(1) 950,000 shares of Penn Central Company stock (plus such additional shares as may be necessary by the anti-dilution provisions approved by the Commission);

(2) $33,600,000 principal amount of Penn Central Company bonds;

(3) $8,000,000 in cash (less any amount representing accrued vacation pay which the New Haven Trustees and Penn Central Company agree is to be assumed by Penn Central Company); and

Penn Central Company is further directed on December 31, 1968 to assume obligation and liability in respect of:

(a) the Debtor's equipment obligations;

(b) the Debtor's Harlem River Division mortgage and bonds;

(c) the mortgage, bonds and certificates of contingent beneficial interest when issued pursuant to the Plan of Reorganization of the Boston and Providence Railroad Corporation (B&P);

(d) the payment for publicly held shares of the Boston and Providence Railroad Corporation upon consummation of the Plan of Reorganization of the B&P; and

(e) such other obligations and liabilities of the Debtor or of the New Haven Trustees, all as are provided in the reports and orders of the Commission referred to herein; and

Penn Central Company is further directed, on December 31, 1968, to cancel and surrender to the New Haven Trustees all Certificates of the New Haven Trustees held by said Company to evidence loans to the New Haven Trustees.

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C. The New Haven Trustees and Penn Central Company are hereby authorized and directed to perform all obligations to be performed by them pursuant to the provisions of the Plan relating to the inclusion of the Debtor and of the operations of the B&P in Penn Central Company, including the making of adjustments on May 31, 1969, the post-closing adjustment date under the Plan, in such amounts as may be payable by the New Haven Trustees and Penn Central Company, respectively, on said date pursuant to Section 7 of the Agreement between the New Haven Trustees and the Pennsylvania Railroad Company and the New York Central Railroad Company, dated April 21, 1966, as amended (the Purchase Agreement).

D. The New Haven Trustees are authorized and directed to turn over to Penn Central Company on December 31, 1968 the operations of the B&P and all rights of the Debtor with respect to such operations, and Penn Central Company is directed to operate the B&P, subject to the reserved jurisdictions of the Commission and of this Court, pending consummation of the Plan of Reorganization of the B&P, the payment by Penn Central Company for the publicly held shares of the B&P, the conveyance of the assets of the B&P to Penn Central Company and the assumption by Penn Central Company of the obligations under the mortgage bonds and certificates of contingent beneficial interest to be issued pursuant to the Plan of Reorganization of the B&P, Penn Central Company to succeed to the rights of the New Haven upon consummation of said Plan.

E. The Clerk of this Court is directed forthwith to turn over to the New Haven Trustees for delivery to Penn Central Company on the closing date the following assets held in the registry of this Court:

(1) 5% Note of Railway Express Agency, Incorporated, in the principal amount of $1,272,284.02;

(2) $1,068,000 principal amount of The Providence Terminal Company 4½% First Mortgage Bonds;

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(3) 9,551 shares of stock of Providence and Worcester Railroad Company;

(4) 1,071 shares of stock of Norwich and Worcester Railroad Company;

(5) 3,364 shares of stock of Fruit Growers Express Company;

(6) 15,000 shares of stock of The New York Connecting Rail Road Company;

(7) 7 shares of stock of The Boston Terminal Corporation; and

(8) 15,000 shares of stock of New England Transportation Company and 6% demand note of said Company in the principal amount of $738,000.

F. The Trustees under the indentures of the Debtor's First and Refunding Mortgage and of the Debtor's General Income Mortgage are hereby directed to turn over and release forthwith to the New Haven Trustees for delivery to Penn Central Company on the closing date all securities held in pledge pursuant to said indentures including the following:

(1) 25,877 shares of stock of The Pullman Company;

(2) 400 shares of stock of South Manchester Railroad Company; and

(3) Voting trust certificate substituted for 91,344 shares of stock of Railway Express Agency, Incorporated, pursuant to Order No. 510 herein.

G. All persons, firms and corporations whatsoever, and wheresoever situated, located or domiciled are directed to turn over forthwith to the New Haven Trustees for delivery to Penn Central Company on the closing date any and all of the Debtor's assets held by them, in pledge or otherwise, which are to be conveyed to Penn Central Company pursuant to the Plan.

H. The conveyance of the Debtor's assets to Penn Central Company pursuant to the Plan shall be a binding transfer to

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Penn Central Company free and clear of all liens, charges and encumbrances thereon except as specified in Section 3.2 of the Purchase Agreement as modified with regard to the Harlem River Division mortgage and bonds and approved in the Plan; the liens, charges and encumbrances to which the Debtor's assets are subject prior to the conveyance of such assets shall attach and be recognized as continuing liens, charges and encumbrances upon the assets hereafter held by the New Haven Trustees, including all assets on deposit in the registry of this Court, all as provided in the Plan.

I. Upon inclusion of the Debtor in Penn Central Company, the New Haven Trustees shall be relieved of the duty to operate and manage the railroad and common carrier properties of the Debtor, including those railroad and common carrier properties operated by the Trustees under lease or other arrangement; and in all other respects, the Trustees shall have all of the authority hitherto granted them in these proceedings.

J. The conveyance of the Debtor's assets by the New Haven Trustees and the payment of consideration by Penn Central Company, as provided herein, shall be without prejudice to the right of any party to contest the fairness and adequacy of the consideration and the other terms of the inclusion of the Debtor's operation in Penn Central Company.

K. The Court hereby reserves jurisdiction to adjudicate all operations and claims for equitable treatment heretofore filed herein except that all objections to the inclusion of the Debtor's operations in Penn Central Company as of December 31, 1968 are hereby overruled and denied.

L. Upon receipt of the consideration to be paid from Penn Central Company, the Trustees shall forthwith deposit in the registry of this Court the stock and bonds of Penn Central Company received by them, pending further order of this Court upon notice to all parties, provided, however, that, until further order of the Court, the New Haven Trustees shall be entitled to receive directly payments of interest and dividends on such securities.

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M. The Clerk of this Court is hereby directed to transmit a certified copy of this Decree and of the Opinion of the Court hereon dated December 24th, 1968 to the Interstate Commerce Commission.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: December 24th, 1968.

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